

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)
)
)
) Criminal Action No. 12-100
v.)
)
) Judge Cathy Bissoon
DAMON AGURS,)
 Defendant.)

MEMORANDUM AND ORDER

Pending before the Court is Defendant Damon Agurs's Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255, filed on October 3, 2016. (Doc. 131). The Government timely responded in opposition to this Motion (Doc. 135) and Defendant timely replied in support (Doc. Doc. 136).

Defendant's Motion rests entirely on the argument that the residual clause of the career offender guideline, United States Sentencing Guideline § 4B1.2, is unconstitutionally vague for the same reasons that the residual clause of the Armed Career Criminal Act ("ACCA") was found invalid in Johnson v. United States, 135 S. Ct. 2551 (2015). See, e.g., Motion to Vacate Sentence at ¶¶ 20, 31, 43, 45.

Subsequent to the filing of Defendant's Motion and the Government's Response, the Supreme Court decided Beckles v. United States, 137 S. Ct. 886 (2017), in which it held that "[b]ecause the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, § 4B1.2(a)'s residual clause is not void for vagueness." Id. at 897.

As a result, Defendant's arguments are foreclosed by Beckles and his Motion to Vacate Sentence is DENIED with prejudice.

IT IS SO ORDERED.

November 20, 2017

s\Cathy Bissoon
Cathy Bissoon
United States District Judge

cc (via email notification):

All counsel of record